



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 5, 1998

Mr. Martin L. Peterson  
Assistant District Attorney  
220<sup>th</sup> Judicial District of Texas  
Bosque, Comanche and Hamilton Counties  
P.O. Box 368  
Meridian, Texas 76665

OR98-0016

Dear Mr. Peterson:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 112001.

The District Attorney for Hamilton County (the "district attorney") received a request for "an opportunity to review and copy all files, records and any other documents . . . pertaining to the arrest, investigation and trial of *State of Texas v. Jerry Don Martin*, Cause No. 6498-A." You assert that the requested information is excepted from required public disclosure based on sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Gov't Code § 261.201(a). We believe that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) at 2 (construing predecessor statute).<sup>1</sup>

However, you state that one report in the file was apparently introduced as evidence at the trial. You express concern about the effect of that prior release on the current request for information. You raise section 552.007 of the Government Code, which reads as follows:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law

(b) Public information made available under Subsection (a) must be made available to any person.

Pursuant to this provision, a governmental body that releases nonconfidential information to a member of the public, must release the information to all members of the public who request it. *See* Open Records Decision No. 400 (1983) (construing statutory predecessor to Government Code section 552.111). However, the prohibition against selective disclosure does not apply when the governmental body releases confidential information to the public. *See id.* Furthermore, exchanging information among litigants in informal discovery is not a voluntary release for purposes of section 552.007. *See* Open Records Decision No. 579 (1990) at 9. Thus, we do not believe the district attorney voluntarily disclosed the report so as to implicate section 552.007 of the Government Code.

Nor do we believe the district attorney has waived its claim under section 552.101 of the Government Code. We acknowledge that, for purposes of a court proceeding, the district attorney may have waived the protection of section 261.201(a) because of its disclosure during trial. *See Patmore v. State*, 831 S.W.2d 97 (Tex. App.--Eastland 1992, no writ) (waiver of predecessor of section 261.201 by release of videotape of victim to several individuals); *see also Jackson v. State*, 624 S.W.2d 306 (Tex. App.--Dallas 1991, no pet.) (waiver of attorney client privilege by introducing information at trial). However, Government Code section 552.353(a) provides that "[a] person commits an offense if the person distributes information considered confidential under the terms of this chapter."

---

<sup>1</sup>We note that subsections (b) and (c) of section 261.201 permit a court to order the disclosure of confidential child abuse or neglect information in certain circumstances.

Moreover, although this office has found that a governmental body has waived a privilege in the context of the act, it has done so only in situations in which the privilege protects just the interests of a governmental body. *See* Open Records Decision Nos. 630 (1994) at 4 (waiver of attorney-client privilege as incorporated in section 552.107(1) of act); 549 (1990) (waiver of informer's privilege). We do not believe section 261.201 protects just the interests of the governmental body; it also protects the interest of individuals who report child abuse and neglect. *See Texas Dept. of Human Resource v. Benson*, 893 S.W. 236, 242 (Tex. App.--Austin 1995, writ denied) (discussing statutory recognition of need to preserve anonymity of those who report child abuse and neglect). We do not believe the act permits a governmental body to waive section 552.101 when it operates in conjunction with a statute that protects more than the interests of a governmental body. Thus, we conclude that, under the act, the district attorney must not release the report to the requestor.

In light of our conclusion above, we need not address your section 552.108 claim. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 112001

Enclosures: Submitted documents

cc: Mr. Keith S. Hampton  
819 ½ West 11<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)